IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No.2295 of 2005

Shri Ranjan Kumar Routray ..Petitioner
vs
Shri R. Bhattacharjee
Then Additional Director General
and Ors. . ..Respondents

Mr S.P. Saxena with Mr. S.G. Pillai for the petitioner
Mr. Rajiv Chavan with Mr. Pankaj Kapoor for the respondents.

CORAM: J.N. PATEL,Acg C.J. ,&
S.C.DHARMADHIKARI, J.
DATE: March 12, 2007.

P.C.:-

Heard the learned counsel for the parties.

1. The petitioner has impugned the order of the Central Administrative Tribunal(CAT), which has rejected his Original Application seeking quashing of the adverse entries in the Annual Confidential Report (ACR) for the year 1993-94 and consequential proceedings, in which his claim was rejected by the Chairman, Central Board of Customs and Central Excise (CBEC) and the Memorial to the Hon`ble President, who also rejected the petitioner's claim by communication dated 21st November 1995.

2. It is the case of the petitioner that the adverse entries are made out of malice, extraneous consideration and has emphasised his performance on administrative side relating to his contribution in the seizure of Rs.400 crores while he was working with D.R.I., Cuttack, which according to the petitioner has been ignored while entries in his ACR came to be recorded.

3. On an earlier occasion the petitioner has approached this Court and impugned the order passed by the CAT and this Court remanded the matter for its re-examination. It is thereafter, that the CAT again dismissed the Original Application of the petitioner by the impugned order.

4. The learned counsel for the petitioner submits that it was obligatory on the part of the disciplinary authority to have communicated the remarks which were entered in his ACR, which resulted in down grading his assessment from “very good” to “good”. As the remarks were not communicated, they cannot be taken into consideration for considering him for promotion to the higher grade.

5. It is specifically submitted before us that the entry would be adverse, if the authority assessed the performance below the bench mark prescribed for promotion to the next higher grade, by placing reliance in the case of U.P. Jal Nigam vs Prabhat Chandra Jain (1996(33), ATC 217 (SC). Another contention raised before us is that the official, who assessed him and made adverse entries in his ACR, was himself under cloud and, therefore, in the given facts and circumstances the assessment ought to have been made by the officer under whom the petitioner had worked from March to November, 1993, rather than an officer, who actually assessed his performance and made the impugned entries.

6. We have examined from the copies of the assessment record i.e. ACR placed on record and found that the allegations on the basis of which the petitioner claims that the adverse entries are made out of malice, extraneous considerations and wholly subjective by ignoring petitioner's contribution in the seizure of Rs.400 crores, cannot be sustained for the simple reason that nothing as such is reflected from the ACR. There has been no specific pleading to that effect by the petitioner in his application filed before the CAT as to how the officer concerned had any bias or was prejudiced against the

petitioner. On the other hand, what we found is that the Reviewing Committee has agreed with the assessment done by reporting officer of the petitioner and in one case it has rectified the assessment relating to the year 1997-98.

7. We are of the view that the CAT has taken into consideration the ACR of the petitioner and found that as the petitioner's grading was not upto the mark and the Reviewing Authority had written that the petitioner is an average officer with overall grading as good in the assessment of 1992-93, cannot by itself be said that the petitioner's performance was very good.

8. In so far as the claim of the petitioner that he was instrumental in the detection of evasion of duty to the tune of Rs.400 crores is concerned, the role played by the petitioner was not such that he can claim the sole credit for the same. It was a team work and the petitioner was only part of the DRI, Cuttack in processing the amount of evasion of duty which was detected and it was not in the sum of Rs.400 crores but Rs.215 crores. which was entirely the work of DRI, CZU and the petitioner, who was A.D. in DRI Cuttack, cannot be credited for the work as claimed by the petitioner in his self assessment.

9. Therefore, in the facts and circumstances of the case, we do not find that the petitioner has been in any manner prejudiced merely because he could not make his overall grade as very good, which is required for his promotion to the next higher grade and this cannot be considered as adverse remarks, which is required to be communicated to him. As such there is no merit in the petition. The petition is dismissed.

ACTING CHIEF JUSTICE

S.C. DHARMADHIKARI, J.